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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2012-113

12 **DENISE KAY WHITTAKER**
13 **16081 Marian Avenue**
14 **Lake Elsinore, CA 92530**

A C C U S A T I O N

15 **Registered Nurse License No. 430117**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered
24 Nurse License Number 430117 to Denise Kay Whittaker (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

...

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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1 8. Section 493 of the Code states in pertinent part:

2 Notwithstanding any other provision of law, in a proceeding conducted
3 by a board within the department pursuant to law to deny an application for a
4 license or to suspend or revoke a license or otherwise take disciplinary

5 action against a person who holds a license, upon the ground that the
6 applicant or the licensee has been convicted of a crime substantially related
7 to the qualifications, functions, and duties of the licensee in question, the
8 record of conviction of the crime shall be conclusive evidence of the fact
9 that the conviction occurred, but only of that fact, and the board may inquire
10 into the circumstances surrounding the commission of the crime in order to
11 fix the degree of discipline or to determine if the conviction is substantially
12 related to the qualifications, functions, and duties of the licensee in question.

13 As used in this section, 'license' includes 'certificate,' 'permit,'
14 'authority,' and 'registration.'

15 9. Section 2761 of the Code states:

16 The board may take disciplinary action against a certified or licensed
17 nurse or deny an application for a certificate or license for any of the
18 following:

19 ...

20 (a) Unprofessional conduct, which includes, but is not limited to, the
21 following:

22 ...

23 (f) Conviction of a felony or of any offense substantially related to the
24 qualifications, functions, and duties of a registered nurse, in which event the
25 record of the conviction shall be conclusive evidence thereof.

26 ...

27 10. Section 2762 of the Code states:

28 In addition to other acts constituting unprofessional conduct within the
29 meaning of this chapter [the Nursing Practice Act], it is unprofessional
30 conduct for a person licensed under this chapter to do any of the following:

31

32 (b) Use any controlled substance as defined in Division 10
33 (commencing with Section 11000) of the Health and Safety Code, or any
34 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
35 beverages, to an extent or in a manner dangerous or injurious to himself or
36 herself, any other person, or the public or to the extent that such use impairs
37 his or her ability to conduct with safety to the public the practice authorized
38 by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification
4 of a record pertaining to, the substances described in subdivision (a) of this
5 section, in which event the record of the conviction is conclusive evidence
6 thereof.

7

8 REGULATORY PROVISIONS

9 11. California Code of Regulations, title 16, section 1444, states:

10 A conviction or act shall be considered to be substantially related to
11 the qualifications, functions or duties of a registered nurse if to a substantial
12 degree it evidences the present or potential unfitness of a registered nurse to
13 practice in a manner consistent with the public health, safety, or welfare.
14 Such convictions or acts shall include but not be limited to the following:

15 (a) Assaultive or abusive conduct including, but not limited to, those
16 violations listed in subdivision (d) of Penal Code Section 11160.

17 (b) Failure to comply with any mandatory reporting requirements.

18 (c) Theft, dishonesty, fraud, or deceit.

19 (d) Any conviction or act subject to an order of registration pursuant to
20 Section 290 of the Penal Code.

21 12. California Code of Regulations, title 16, section 1445 states in pertinent part:

22 ...

23 (b) When considering the suspension or revocation of a license on the
24 grounds that a registered nurse has been convicted of a crime, the board, in
25 evaluating the rehabilitation of such person and his/her eligibility for a
26 license will consider the following criteria:

27 (1) Nature and severity of the act(s) or offense(s).

28 (2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

(4) Whether the licensee has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the
licensee.

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1 (5) If applicable, evidence of expungement proceedings pursuant to
2 Section 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.
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5 COSTS

6 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 FIRST CAUSE FOR DISCIPLINE

11 (April 20, 2004 Criminal Convictions for DUI and other Crimes on January 27, 2004)

12 14. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
13 (f), of the Code in that Respondent was convicted of crimes substantially related to the
14 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

15 a. On or about April 20, 2004, in a criminal proceeding entitled *The People of the*
16 *State of California v Denise Kay Whitaker*, in Riverside County Superior Court, case number
17 RIM 447836, Respondent was convicted on her plea of guilty, for violating Vehicle Code section
18 23152, subdivision (a), driving while under the influence; and 23152 subdivision (b), driving with
19 a blood alcohol concentration (BAC) of 0.08% or more by weight, both misdemeanors.
20 Respondent also admitted to a violation of Penal Code section 23578, driving with a blood
21 alcohol level greater than 0.15%. Respondent further admitted to a violation of Vehicle Code
22 section 20002 subdivision (a), failing to stop and furnish information after an accident, a
23 misdemeanor. In addition to the three misdemeanors convictions, Respondent was originally
24 charged with violating Penal Code section 422, threatening to commit a crime that would result in
25 great bodily injury; which was dismissed as part of a plea agreement.

26 b. As a result of her convictions Respondent, was sentenced to three years probation,
27 and ordered to serve two days in jail, attend a first time offender DUI program, to not drive if not
28 properly licensed or insured, and to pay fines in the amount of \$1,452.40.

1 c. The facts that led to the conviction are that on or about January 27, 2004,
2 Respondent was involved in a hit and run accident while intoxicated. Respondent had entered the
3 Lounge Bar in Corona, California, but was refused service and asked to leave. Respondent
4 refused to leave and was escorted out of the bar due to her level of intoxication and her past
5 history of fighting in the bar. Respondent told the bar staff escorting her out that, "You don't
6 even know it, my old man is coming down here to pop-a-cap in your stomach." Respondent
7 further elaborated that, "My homeboys are coming down to pop-a-cap in your balls, you're dead,
8 you're dead." Respondent then entered her vehicle, yelled obscenities at the bar's management
9 and backed her vehicle into a parked car, causing damage to the parked car. Respondent left the
10 scene of the accident, but was found by officers only a few blocks away, because her vehicle was
11 inoperative due to extensive tire damage. Officers noticed a strong smell of alcohol coming
12 from Respondent's person, that her speech was slurred and her eyes were bloodshot and watery.
13 A witness identified Respondent as the driver of the vehicle that had struck a parked car and fled
14 from the bar. Respondent was arrested and her BAC was found to be .22% by weight, almost
15 three times the legal limit.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(April 20, 2004 Criminal Conviction for Domestic Violence on February 11, 2004)**

18 15. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
19 (f), of the Code in that Respondent was convicted of a crime substantially related to the
20 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

21 a. On or about April 20, 2004, in a criminal proceeding entitled *The People of the*
22 *State of California v Denise Kay Whitaker*, in Riverside County Superior Court, case number
23 RIF115393, Respondent was convicted on her plea of guilty of violating Penal Code section
24 273.5(a), abuse upon a spouse/cohabitant, a felony. Respondent was originally charged with both
25 domestic violence and violating Penal Code section 245, assault with a deadly weapon; the
26 assault charge was dismissed as a term of the plea agreement.

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b. As a result of her conviction Respondent was sentenced to three years probation, and ordered pay \$810 in fines, to attend a substance abuse counseling program and to serve 365 days in jail, of which 357 days were suspended pending successful completion of probation.

c. The facts that led to the conviction are that on or about February 11, 2004, Respondent, after consuming alcohol, hit her live-in boyfriend in the face with a beer bottle causing injury to his nose and eye. The night of the incident, City of Corona Police officers contacted Respondent at her residence. Respondent told officers that Respondent, her live-in boyfriend, and another woman were drinking alcohol in Respondent's apartment. Respondent believed her boyfriend was becoming intimate with the other women so she, "popped him" in the nose and hit him with a beer bottle.

THIRD CAUSE FOR DISCIPLINE

(January 28, 2005 Criminal Convictions for Assault and Battery on July 12, 2004)

16. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision (f), of the Code in that Respondent was convicted of crimes substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about January 28, 2005, in a criminal proceeding entitled *The People of the State of California v Denise Kay Whitaker*, in Orange County Superior Court, case number 04CM05726, Respondent was convicted on her plea of guilty of violating Penal Code sections 240, attempting to commit a violent injury; and section 242, unlawfully using force and violence upon another person, both misdemeanors. A charge of violating Penal Code section 415, disturbing the peace, was dropped as part of a plea agreement.

b. As a result of her convictions Respondent, was sentenced to three years probation, and ordered to complete 20 days of community service and pay \$120 in fines.

c. The facts that led to the conviction are that on or about July 12, 2004, Respondent pushed, threatened, and used racial slurs at an other woman at a community pool in the City of Orange. Respondent, who had been drinking, was asked by another adult to please not cuss in front of the children at the pool. Respondent proceed to make racial slurs and white supremacist

1 threats toward the other adult. Respondent then pushed the other adult causing her to stagger
2 back into a group of chairs.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(August 1, 2005 Conviction for Driving with a Suspended License on November 23, 2004)**

5 17. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
6 (f), of the Code in that Respondent was convicted of a crime substantially related to the
7 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

8 a. On or about April 1, 2005, in a criminal proceeding entitled *The People of the*
9 *State of California v Denise Kay Whitaker*, in Riverside County Superior Court, case number
10 SWM034974, Respondent was convicted on her plea of guilty of violating Vehicle Code section
11 14601.1(a), driving with a suspended license, a misdemeanor as well as violating Vehicle Code
12 section 21453A, failing to obey a red light, an infraction.

13 b. As a result of her conviction Respondent was ordered to pay \$652 in fines.

14 c. The facts that led to the conviction are that on or about November 23, 2004,
15 Respondent was driving her vehicle in Temucula, California. Respondent failed to stop at a red
16 light and was pulled over by a deputy from the Riverside County Sheriff's Department. Upon
17 contacting Respondent, the deputy became aware that Respondent was driving with a suspended
18 license.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

21 18. Respondent has subjected her registered nurse license to disciplinary action under
22 section 2762, subdivision (b) of the Code, for unprofessional conduct, in that on or about January
23 27, 2004; February 11, 2004; and July 12, 2004; as described in paragraph 14-16 above,
24 Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
25 injurious to herself, and potentially dangerous to others, in that she operated a motor vehicle with
26 a significantly high blood alcohol level, attacked her live-in boyfriend while under the influence
27 of alcohol, and assaulted another individual while under the influence of alcohol.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)

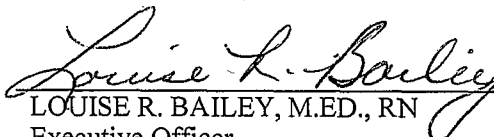
3 19. Respondent has subjected her registered nurse license to disciplinary action under
4 section 2762, subdivision (c) of the Code, for unprofessional conduct, in that on or about April
5 20, 2004, as described in paragraph 14 above, Respondent was convicted of a criminal offense
6 involving the consumption of alcohol.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 430117, issued to Denise
11 Kay Whittaker;
- 12 2. Ordering Denise Kay Whittaker to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16
- 17

18 DATED: August 16, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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